

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT EUGENE COOK,
Defendant.

MEMORANDUM DECISION AND
ORDER REGARDING
COMPETENCY OF DEFENDANT

Case No. 1:08-CR-135 TS

Defendant submitted a Motion to Determine Competency on June 8, 2009, which the Court granted. Defendant was evaluated at the Federal Correctional Institution in Fort Worth, Texas, by Robert Johnson, Ph.D. Dr. Johnson prepared a report, dated September 11, 2009. The Court has reviewed that report. This matter came before the Court for a competency hearing on November 2, 2009. At the competency hearing, the Court questioned Defendant, who did not contest his competency.

18 U.S.C. § 4241(c) provides that a hearing on competency “shall be conducted pursuant to the provisions of section 4247(d).” Under § 4247(d), the Court must hold a hearing and Defendant must have an opportunity to testify, to present evidence, to subpoena witnesses on his

behalf, and to confront and cross-examine any witnesses who appear at the hearing.¹ The Court shall determine if Defendant is competent by a preponderance of evidence.²


“[T]he test for competency is whether the defendant ‘has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.’”³ “When assessing a defendant's competence, ‘the district court may rely on a number of factors, including medical opinion and the court's observation of the defendant's comportment.’”⁴

Having reviewed the report of Dr. Johnson, questioned Defendant, and for the reasons stated at the hearing, the Court finds that Defendant is competent to stand trial at this time. The Court excludes the time from filing the Motion to Determine Competency to the new trial date of January 11, 2010, pursuant to 18 U.S.C. § 3161(h)(1)(A).

SO ORDERED.

DATED November 3, 2009.

BY THE COURT:



TED STEWART
United States District Judge

¹18 U.S.C. § 4247(d).

²*Id.* § 4241(d).

³*United States v. Mackovich*, 209 F.3d 1227, 1231-32 (10th Cir. 2000) (quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975)).

⁴*Id.* at 1232 (quoting *United States v. Boigegrain*, 155 F.3d 1181, 1189 (10th Cir. 1998)).